



## **FINDINGS OF FACT**

1. Plaintiff filed the instant lawsuit on May 9, 2017.<sup>1</sup>
2. Plaintiff Ronald Calzone is a taxpayer and citizen of the State of Missouri.
3. Senate Bill 638 ("S.B. 638") was introduced and first read in the Missouri Senate on January 6, 2016. The bill's original title was "An Act to repeal section 170.011, RSMo, and to enact in lieu thereof two new sections relating to civics education."
4. During the legislative process, each chamber of the General Assembly adopted or introduced a variety of amendments to S.B. 638.
5. On April 14, 2016, the Senate third read and passed Senate Committee Substitute ("S.C.S.") for S.B. 638, which included two Senate amendments.
6. On May 4, 2016, the House third read and passed the bill, which had included several House amendments.
7. On May 5 and 6, 2016, each chamber appointed members of a conference committee to reconcile the differences between the Senate version and the House version of S.B. 638.

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<sup>1</sup> At the time the lawsuit was filed, Plaintiff named several Defendants as parties. On October 27, 2017, the Court dismissed certain of these named Defendants. At that time, the remaining Defendants became Margie Vandeven, in her official capacity as Commissioner of the Missouri Department of Elementary and Secondary Education; and Jennifer Tidball, in her official capacity as Director of the Missouri Department of Social Services.

Pursuant to Pursuant to Rule 52.13(d) and due to changes in office, the Court hereby substitutes Roger Dorson, in his official capacity as Interim Commissioner of the Missouri Department of Elementary and Secondary Education, in place of former Defendant Margie Vandeven; and the Court hereby substitutes Steve Corsi, in his official capacity as Director of the Department of Social Services, in place of former Defendant Jennifer Tidball.

8. On May 11, 2016, the conference committee approved a Conference Committee Substitute ("C.C.S.") for the S.C.S. for S.B. 638.

9. The C.C.S. was given the title "An Act to repeal sections 160.400, 160.403, 160.405, 160.410, 160.415, 160.417, 160.545, 161.216, 162.073, 162.261, 162.531, 162.541, 162.720, 163.031, 167.131, 167.241, 170.011, 170.310, 171.021, 173.750, RSMo, and to enact in lieu thereof twenty-nine new sections relating to elementary and secondary education, with an effective date for a certain section."

10. Afterwards and also on May 11, 2016, the House adopted and third S.B. 638 as amended

11. On May 12, 2016, the Senate truly agreed to and finally passed S.B. 638, as amended.

12. On June 22, 2016, the Governor signed S.B. 638 into law.

13. S.B. 638's final title, as enacted, is "An Act to repeal sections 160.400, 160.403, 160.405, 160.410, 160.415, 160.417, 160.545, 161.216, 162.073, 162.261, 162.531, 162.541, 162.720, 163.031, 167.131, 167.241, 170.011, 170.310, 171.021, 173.750, RSMo, and to enact in lieu thereof twenty-nine new sections relating to elementary and secondary education, with an effective date for a certain section."

14. S.B. 638, as truly agreed and finally passed, will result in an expenditure of state funds.

### **STANDARD OF REVIEW**

"A judgment on the pleadings is appropriate when the party who moves for such a judgment is entitled to judgment as a matter of law on the face of the pleadings. For purposes of

the motion, the well-pleaded facts of the non-moving party's pleading are treated as admitted.” *Paragon Lawns, Inc. v. Barefoot, Inc.*, 304 S.W.3d 298, 300–01 (Mo. App. W.D. 2010) (internal citations and quotations omitted). All that is at issue for the Court to resolve in this case is the issue of law of whether S.B. 638 violates the Missouri Constitution’s procedural constitutional limitations in Article III, §§ 21 and 23.

### **CONCLUSIONS OF LAW**

At the outset, the Court takes judicial notice of the legislative history, amendments, and bill titles of S.B. 638. *See Brown v. Morris*, 290 S.W.2d 160, 167 (Mo. 1956).

The Court first finds that Plaintiff has standing to bring this lawsuit, as in his Petition Plaintiff alleges that he is a taxpayer of Missouri and is impacted by the expenditure of state funds by S.B. 638. Courts “determine standing as a matter of law on the basis of the petition and the undisputed facts.” *White v. White*, 293 S.W.3d 1, 8 (Mo. App. W.D. 2009). Under *Manzara v. State*, 343 S.W.3d 656 (Mo. banc 2011), “a direct expenditure of public funds generated through taxation is a sum paid out, without any intervening agency or step, of money or other liquid assets that come into existence through the means by which the state obtains revenue required for its activities.” *Id.* at 660. “Allegations and proof of the illegal expenditure of public funds or the prospect of such illegal expenditures is an essential element to grant taxpayer standing.” *Ours v. City of Rolla*, 965 S.W.2d 343, 346 (Mo. App. S.D. 1998) (citing *Worlledge v. City of Greenwood*, 627 S.W.2d 328, 331 (Mo. App. W.D. 1982)). Plaintiff’s Petition meets this standard. *See* Petition at ¶¶ 2, 6, 8. And S.B. 638 contains at least the prospect of an expenditure, which Plaintiff has also alleged. *See id.*

Finally, the recent decision of the Supreme Court of Missouri in *Lebeau v. Commissioners of Franklin County*, 422 S.W.3d 294 (Mo. banc 2014) only serves to confirm this analysis. Accordingly, the Court finds that Plaintiff Ronald J. Calzone has standing to bring the claims discussed below.

Next, at the combined hearing on the parties' motions, Plaintiff offered into evidence affidavits of two registered Missouri lobbyists, two Missouri citizens, and a former member of the Missouri House of Representatives. These affidavits purport to state these individuals' opinions on S.B. 638 and the bill's passage, or their opinions on the legislative process generally. Plaintiff attached these affidavits to his Motion for Summary Judgment but he did not otherwise rely upon them or their content as specific, material facts in his Statement of Uncontroverted Materials Facts in support of his Motion for Summary Judgment. Defendants moved to strike these affidavits. The Court received the affidavits into evidence at the hearing. However, as the issues presented for the Court's consideration are issues of law, the Court does not rely upon them in entering this judgment. *See State v. Honeycutt*, 421 S.W.3d 410 (Mo. banc 2013) ("Whether a statute is constitutional is an issue of law[.]").

Plaintiff's Petition is brought in three Counts. In Count I, Plaintiff alleged that S.B. 638 is unconstitutional because it violated Article III, § 21 of the Missouri Constitution in that the bill's purpose was changed during its passage through the General Assembly. In Count II, Plaintiff alleged that S.B. 638 is unconstitutional because it violates Article III, § 23's "single subject" rule. In Count III, Plaintiff alleged that S.B. 638 is unconstitutional because it violates both Article III, §§ 21 and 23 in that the title to S.B. 638 was "substantively changed" in the legislative process. The Court will address each Count in turn.

### **Count I – Article III, § 21 (“Original Purpose”)**

Article III, § 21 states that “no bill shall be amended in its passage . . . as to change its original purpose.” Courts show a great deal of deference to the legislative process, and legislation passed by the General Assembly and signed by the Governor “carries with it a strong presumption of constitutionality.” *Hammerschmidt v. Boone Cty.*, 877 S.W.2d 98, 102 (Mo. banc 1994). Courts will not find a constitutional violation unless a change to the bill “clearly and undoubtedly violates the constitutional limitation.” *Id.*

In an original-purpose analysis, a bill’s original purpose is determined as of the date of introduction, not the bill as enacted. *Missouri State Med. Ass’n v. Missouri Dep’t of Health*, 39 S.W.3d 837, 839 (Mo. banc 2001). A bill’s original purpose can be ascertained without reference to the original title itself. *Id.* at 839 (“[T]he Constitution does not require that the original purpose be stated anywhere, let alone in the title as introduced.”). The inquiry focuses on what broader purpose does the bill, as introduced, serve to accomplish. *See Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 5–6 (Mo. banc 1984).

Article III, § 21 “was not designed to inhibit the normal legislative processes, in which bills are combined and additions necessary to comply with the legislative intent are made.” *Blue Cross Hospital Service, Inc. of Missouri v. Frappier*, 681 S.W.2d 925, 929 (Mo. banc 1984). Rather, the “restriction is against the introduction of matter that is not germane to the object of the legislation or that is unrelated to its original subject. Alterations that bring about an extension or limitation of the scope of the bill are not prohibited; even new matter is not excluded if

germane.” *Stroh*, 954 S.W.2d at 326 (citing *Lincoln Credit Co. v. Peach*, 636 S.W.2d 31, 38 (Mo. banc 1982)). In fact, the original purpose is construed to be the bill’s general, or overarching, purpose; the original purpose is “not necessarily limited by specific statutes referred to in the bill’s original title or text.” *McEuen ex rel. McEuen v. Missouri State Bd. of Educ.*, 120 S.W.3d 207, 210 (Mo. banc 2003).

In *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 325-26 (Mo. banc 1997), the Missouri Supreme Court held that the original purpose of a bill initially introduced to address a single statute “relating to the auction of vintage wine” also encompassed a number of later amendments regulating the sale and labeling of beer and malt liquor. 954 S.W.2d at 324-25. Construing the bill’s purpose broadly, the Court found that the original purpose was “the amendment of Missouri’s liquor control law.” *Id.* at 326. Other cases are in accord with this overall, general-purpose analysis. *See also Missouri State Med. Ass’n*, 39 S.W. 39 at 839 (notwithstanding words in the bill’s original title, the bill’s original purpose was not just a mandate to insurers to provide a co-payment for certain cancer screenings, but a mandate to insurers to provide health care services in general); *Jackson County Sports Complex Authority v. State*, 226 S.W.3d 156, 160-61 (Mo. banc 2007) (bill with original title of “relating to county government” and 16 provisions was not rendered constitutionally deficient by later legislative amendments addressing other political subdivisions outside the county level and including over 100 different provisions).

S.B. 638 was amended in the legislative process through House Amendment No. 1. Legislative amendments are standard legislative activity, so long as they do not exceed constitutional limitations. *See Westin Crown Plaza Hotel Co.*, 664 S.W.2d at 5–6 (Recognizing other Supreme Court cases holding that “it may be appropriate for the legislature to change the

title of a bill as it proceeds through the legislature to more accurately reflect the real scope of the subject matter in the bill.”). Here, S.B. 638’s amendments do not exceed Article III, § 21’s original-purpose requirement.

S.B. 638’s original purpose, as expressed through its content and title as introduced, was to promote education in Missouri and amend programs administered by DESE and the State Board of Education. The statutes in S.B. 638, as introduced, included amending certain curriculum requirements. The terms in S.B. 638’s title as introduced—repealing one statute and enacting a two new ones relating to “civics education”—serve that broader purpose of promoting education in Missouri and amending education programs. But those terms (“civics education”) are not a stand-in for the bill’s purpose, in and of themselves. *See McEuen*, 120 S.W.3d at 210.

Subsequent changes to S.B. 638’s title and the addition of new provisions during the amendment process also reflect the bill’s original, general purpose. Each of the provisions affected by S.B. 638 is an additional way to promote education in Missouri, and S.B. 638 can be generally broken down into three education-related categories. First, the final bill included provision focused on the classroom, such as programs designed to assist students, including programs for gifted students (§ 162.720), students unprepared to enter college or the workforce (§§ 167.903 and 167.905), students with learning disabilities such as dyslexia (§ 167.950), and cardiopulmonary resuscitation training curriculum requirements (§ 170.310).<sup>2</sup> Second, the final bill includes provisions regarding charter schools and their curriculum, funding, and certification

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<sup>2</sup> The following 14 statutes in Title XI focusing on the classroom (including instruction, methods to assist students, and other programs administered by DESE) were amended or created by S.B. 638: §§ 161.217, 161.1050, 161.1055, 162.720, 163.031, 167.903, 167.905, 167.950, 170.011, 170.310, 170.345, 170.350, 171.021, and 173.750.



requirements.<sup>3</sup> Third, S.B. 638 changes some requirements for local school boards, which, have as their principal mission the oversight of schools and instruction in their jurisdiction.<sup>4</sup>

These provisions advance the State Board of Education's constitutional mission—the supervision of instruction in Missouri's public schools. *See* Mo. Const. Art. IX, § 2(a). As the Missouri Supreme Court held in *Westin Crown Plaza Hotel*, “these later amendments merely changed the details through which the original purpose was to be manifested and effectuated. The additions, therefore, were not unconstitutional.” 664 S.W.2d at 6. The changes to S.B. 638 do not clearly and undoubtedly violate the constitutional limitations of Article III, § 21's original-purpose requirement on changes to a bill's original purpose.

The Court grants the Defendants' Judgment on the Pleadings as to Count I.

### **Count II – Article III, § 23 (“Single Subject”)**

Under Article III, § 23, “[n]o bill shall contain more than one subject.” In analyzing a single-subject constitutional claim, the “bill as enacted is the only version relevant to the single subject requirement.” *Missouri State Med. Ass'n*, 39 S.W.3d at 840. Focusing on the final title of the bill, *not* the relationship between the individual provisions, the test is whether all provisions of the bill “fairly relate to the same subject, have a natural connection therewith or are incidents or means to accomplish its purpose.” *Hammerschmidt*, 877 S.W.2d at 102. The “‘subject’ within the meaning of Article III, § 23, includes all matters that fall within or reasonably relate to the general core purpose of the proposed legislation.” *Id.* “The subject of a

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<sup>3</sup> The following 10 statutes in Title XI governing charter schools were amended or created by S.B. 638: §§ 160.400, 160.403, 160.405, 160.408, 160.410, 160.415, 160.417, 160.545, 167.131, and 167.241.

<sup>4</sup> The following four statutes in Title XI addressing school board governance were amended by S.B. 638: §§ 162.073, 162.261, 162.531, and 162.541.

bill may be ‘clearly expressed by . . . stating some broad umbrella category’ when a bill has ‘multiple and diverse topics’ within a single, overarching subject.” *American Eagle Waste Indust., LLC v. St. Louis County*, 379 S.W.3d 813, 826 (Mo. banc 2012) (citing *Jackson Cty. Sports Complex Auth. v. State*, 226 S.W.3d 156, 161 (Mo. banc 2007)).

The Court must identify the “single subject core of the bill,” *Missouri Roundtable for Life, Inc. v. State*, 396 S.W.3d 348, 351 (Mo. banc 2013), and consider whether the bill contains provisions not “germane, connected and congruous” to that single subject, *American Eagle Waste Indust.*, 379 S.W.3d at 826. Because Article III, § 23 states that the single subject of a bill must be “clearly expressed in its title,” courts “look first to the title of the bill to determine its subject.” *Stroh*, 954 S.W.2d at 327.

Here, S.B. 638’s title as enacted is a bill “relating to elementary and secondary education.” Under *Stroh*, “relating to elementary and secondary education,” is therefore S.B. 638’s single core subject. The question then becomes whether this is a permissible umbrella category and whether all the provisions of the bill “relat[e] to elementary and secondary.” Upon a close inspection of each statute amended or created by S.B. 638, and as discussed above, each of these provisions are geared towards promoting education in Missouri and modifying certain programs administered by DESE and the State Board of Education. These include curriculum requirements and initiatives; charter schools and their curriculum, funding, and certification requirements; and local school boards. These provisions undoubtedly have a natural connection to elementary and secondary education.

The Court finds that “relating to elementary and secondary education” is a permissible subject, similar to other bills upheld by the Missouri Supreme Court. See *Akin v. Dir. of Revenue*,

934 S.W.2d 295 (Mo. banc 1996) (“relating to education”); *Missouri State Med. Ass’n*, 39 S.W.3d at 840-41 (“relating to health services”); *Corvera Abatement Techs., Inc. v. Air Conservation Comm’n*, 973 S.W.2d 851 (Mo. banc 1998) (“relating to environmental control”); *State v. Salter*, 250 S.W.3d 705 (Mo. banc 2008) (Mo. banc 2010) (“relating to workers’ compensation”); *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322 (Mo. banc 2000) (“relating to transportation”). Furthermore, the Court concludes that given that the Missouri Supreme Court approved the title “relating to education” against a single-subject challenge in *Akin*, S.B. 638’s even more narrowly-focused title (“relating to elementary and secondary education”) meets Article III, § 23’s single-subject requirement.

For these reasons, the Defendants’ Motion for Judgment on the Pleadings is sustained as to Count II.

### **Count III – “Substantive Title Change”**

Count III of Plaintiff’s Petition alleges that S.B. 638’s title was *substantively* changed during the amendment process, in violation of Article III, §§ 21 and 23. In support, Plaintiff alleges that “allowing legislators to change the title of bills to fit the evolving bill, rather than requiring the evolution of the bill to remain true to the original title, defeats [the requirements of Article III, §§ 21 and 23].” (Pet., ¶ 45). Defendants have moved to dismiss Count III, arguing that it is not a claim recognized under Missouri law.

The Missouri Constitution does not prohibit the General Assembly from changing a bill’s title during the legislative process. *See, e.g., Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 5-6 (Mo. banc 1984). Moreover, “the title of an act, ‘though performing a most important function, is still not strictly a part of the act proper.’” *Lincoln Credit Co.*, 636 S.W.2d at 38.

The Missouri Supreme Court has made clear that the Constitution recognizes three causes of action for procedural constitutional violations: original-purpose, single-subject, and clear-title challenges. *See Missouri Roundtable for Life*, 396 S.W.3d at n.3 (noting that the only three procedural limitations imposed by the Constitution on a bill's passage are the original-purpose, single-subject, and clear-title rules). While Plaintiff has asserted an original-purpose and single-subject claim, he has not squarely raised a clear-title claim. To that end, both in his written submissions and in his oral argument at the hearing, Plaintiff has made clear that he is asserting a different claim altogether based on substantive changes to a bill's title during the legislative process.

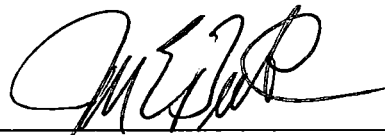
For these reasons, the Court grants Defendants' Motion to Dismiss Count III of Plaintiff's Petition because Count III does not state a claim recognized by Missouri law.

### **ORDER AND JUDGMENT**

Accordingly, it is hereby ORDERED AND ADJUDGED that Defendants' Motion for Judgment on the Pleadings is GRANTED with respect to Count I and Counts II of Plaintiff's Petition, and Defendants' Motion to Dismiss Count III is GRANTED due to Count III's failure to state a claim. Plaintiff's Motion for Summary Judgment is DENIED.

Each party shall bear its own costs.

**SO ORDERED:**

  
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Jon E. Beetem, Circuit Judge

Date: 3/27/18